

**Task Force on Judicial Campaign Finance
Commission for Impartial Courts**

Judicial Council of California
Judicial Council Conference Center, 3rd Floor, Golden Gate Room
455 Golden Gate Avenue
San Francisco, CA 94102

September 11, 2007
8:30 a.m. – 11:30 a.m.

Summary of Meeting

Members present: Hon. William MacLaughlin, Task Force Chair; Hon. Gail Andler; Hon. Alden Danner; Ms. Denise Gordon; Mr. Charles Kim, Jr.; Mr. Robert Leidigh (advisory member); Hon. Bruce McPherson; Hon. Heather Morse; Ms. Angela Padilla; Mr. Michael Planet; Mr. Gerald Uelmen; Mr. Thomas Warwick, Jr.

Members absent: Hon. Richard Aldrich; Ms. Rozenia Cummings.

Consultant present: Ms. Deborah Goldberg.

Staff present: Ms. Nicole Davis, Administrative Coordinator; Mr. Chad Finke, Committee Counsel.

Others present: Ms. Deborah Brown, Managing Attorney, AOC Office of the General Counsel; Hon. Peter Espinoza, Superior Court of Los Angeles County (Steering Committee member); Mr. Michael Roddy, CEO, Superior Court of San Diego County (Steering Committee member).

1. Discussion of Task Force logistics and administrative matters.

Background:

The Chair discussed with the members the general meeting schedule for the Task Force, its relation to the Steering Committee, and various logistical and administrative matters pertaining to the conduct of Task Force meetings.

Action:

The Task Force decided as follows:

- The Task Force is expected to meet six (6) times over eighteen (18) months. Task Force meetings will alternate between northern and southern California, and will be held at AOC facilities in each location.

- The Task Force will attempt to schedule all six (6) of its meetings as soon as possible, based on the scheduling of the Steering Committee's meetings.
- Task Force meeting minutes will not be a verbatim transcript, but rather will reflect a summary of matters discussed and actions taken. Committee counsel for the four task forces will meet and agree on a common format for task force meeting minutes.
- Task Force meetings will generally be open to the public. Certain meetings, however, may have an executive session component that will be closed to the public. The Chair noted that the Steering Committee is considering how to apprise the public of the meetings of the task forces.
- While Task Force members are free to discuss generally the business of the Task Force, members will respect one another's confidences and will not, e.g., attribute specific remarks to specific members when discussing Task Force business with non-members.

2. Distribution of Task Force materials via the web.

Background:

The Task Force discussed whether a web site will be available to use as a central repository for storing, distributing, and possibly discussing Task Force materials.

Action:

Committee counsel will discuss with Steering Committee staff and report back to the Task Force.

3. Creation of working groups.

Background:

The Task Force discussed the need to split into two working groups to address more effectively the Task Force's charge.

Action:

The Task Force agreed to split into two working groups, as follows:

Working Group 1 will be chaired by Judge Morse, and will address proposals to better regulate contributions to, financing of, or spending by candidates on campaigns for judicial office. The members of Working Group 1 are: Justice Aldrich, Ms. Cummings, Mr. Kim, Mr. McPherson, and Mr. Planet.

Working Group 2 will be chaired by Judge Andler, and will address proposals to improve or better regulate judicial campaign advertising, including through enhanced disclosure requirements. Working Group 2 will also address proposals to better regulate disclosure

requirements vis-à-vis judicial campaign contributions and expenditures generally. The members of Working Group 2 are: Judge Danner, Ms. Gordon, Ms. Padilla, Mr. Uelmen, and Mr. Warwick.

Staff will be responsible for coordinating the meetings of both working groups, which meetings will be telephonic. Staff will be present at the meetings of both working groups. Mr. Leidigh will serve as an advisor to both working groups, and will be present at the meetings of both where possible. Working group telephonic meetings will take place in advance of Task Force meetings, which will in turn take place in advance of Steering Committee meetings.

4. Discussion of substantive issues relating to Task Force charge.

Background:

The Task Force discussed numerous substantive issues relating to its charge, including:

- The structure of California judicial elections, e.g., retention at the appellate levels vs. contested at the superior court level; that California judicial elections are nonpartisan; that superior court contested elections may either be contested against an incumbent or “open seat” elections; and that California law permits recall of judges.
- The variation in the cost of running a judicial election campaign from county to county based on, e.g., differing candidate statement costs.
- A framework for approaching the Task Force’s charge, e.g., looking at: (a) the “problems” that California has experienced vis-à-vis judicial campaign finance; (b) additional “problems” that might occur in California in the future; (c) the current state of California law re campaign finance; (d) what actions might be possible under California’s current legal framework, and what steps would need to be taken to implement those actions; (e) what actions the Task Force considers desirable as recommendations; and (f) which of those actions are logistically and politically feasible.
- The need for Task Force recommendations to relate to the overall goal of judicial impartiality, and the need to avoid recommending a system that would only protect—or give the appearance of protecting—incumbent judges.
- Whether reducing or eliminating the costs associated with conducting a judicial election campaign would encourage challenges against incumbent judges.
- The difference in the cost of conducting an “open seat” election campaign, as opposed to a campaign against a sitting judge.
- The timing and different means by which judicial vacancies (e.g., new judgeships, vacancies created by retirement) are filled.
- Whether it is desirable to have a common, statewide means of tracking contributions to, and expenditures relating to, judicial elections.

- Third party spending (e.g., advertising) against judges and judicial candidates, including whether it is desirable to recommend improved disclosure of such spending.

Action:

Discussion only; no action taken.

5. Preparation of materials in advance of next Task Force meeting.

Background:

The Task Force discussed the legal and factual information/data needed in order to proceed with its charge and begin developing recommendations to present to the Steering Committee.

Action:

Prior to the next Task Force meeting, committee counsel will attempt to:

- Research and prepare a summary of the current California law pertaining to judicial campaign finance, including contribution limits (or lack thereof), disclosure requirements, and ethical disqualification requirements based on contributions received;
- Summarize current California law regarding the timing of judicial elections, with a focus on the law that applies when determining whether an open seat will be filled by election rather than appointment;
- Determine generally what information CJA tracks as to judicial elections, and obtain any such data that may be useful to our task force;
- Obtain data from the last several election cycles as to--on a county-by-county basis--the number of contested judicial elections, broken down by elections against an incumbent vs. "open seat" elections, as well as how many of those elections resulted in a "flip" of a judicial office;
- If possible, obtain data from select counties illustrating how much money is spent--and by whom--on contested judicial elections (both against an incumbent and in "open seat" elections);
- Obtain data from the last several election cycles showing in how many appellate-level retention elections incumbents were required to spend money campaigning to retain their seats (and the amount spent, if possible);
- Obtain from the Commission on Judicial Performance data showing difference in discipline rates as between those judges who were originally selected by appointment and those who were originally selected by election;
- Collect data from the 58 counties as to how much, if anything, they charge for candidate statements, as well as any other costs (e.g., filing costs) they may impose on judicial candidates; and

- Compile a report showing instances in which judges have been "targeted" by special interest groups in the last several election cycles, including, if possible, the amount spent in attempting to get those judges voted out of office.

As committee counsel completes the above tasks, materials will be sent to members of the Task Force as they are available rather than in one comprehensive packet.

6. Further discussion of substantive issues relating to Task Force charge.

Background:

The Task Force discussed further substantive issues relating to its charge, dividing those issues into three general categories: (a) disclosure; (b) contribution limits; and (c) public funding.

A. Disclosure

As to disclosure, the Task Force discussed the following topics:

- The need to focus on both disclosure by judges of expenditures and disclosure by third parties of contributions to (or expenditures pertaining to) judicial campaigns.
- The ability of current technology to enhance and make more immediate the disclosure of information about expenditures relating to campaigns.
- Balancing the need for information with the potential burden of (and possible related constitutional prohibition on) certain disclosure requirements.
- Whether to address "secondary" or "tertiary" disclosure requirements.
- The possible chilling effect of certain disclosure requirements.
- Disclosure of loans to a campaign.
- Disclosure of non-cash contributions.
- Post-election disclosure of the retirement of campaign debt.
- Legal and ethical requirements relating to disclosure by judges to litigants of sources of campaign contributions, and possible recusal of judges from cases involving contributors.

B. Contribution limits

As to contribution limits, the Task Force discussed the following topics:

- The effect that contribution limits would have, given the cost of running a judicial election campaign.
- Personal contributions by a judge to his or her own campaign, including last minute "dumping" of funds into a campaign.
- Limits not only on contributions directly to a judge, but also on contributions to political parties or PACs for the purpose of being used against judicial candidates.

- Anonymous donations.
- The possibility of contributions being made not directly to a judicial candidate, but rather to a judicial election committee.

C. Public funding

As to public funding, the Task force discussed the following topics:

- The possibility of a free (publicly funded) voter guide.
- Public funding of judicial elections at the appellate level vs. public funding at the trial court level.
- The logistics of applying public funding to retention elections.
- Possible sources of money to finance a public funding system.

Action:

Discussion only; no action taken.

7. Adjournment.

The Task Force meeting adjourned at 11:35 a.m.